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ELECTION UNDER 35 U.S.C. § 121
Examining Group 1645
Patent Application
Docket No. GJE-65
Serial No. 09/830,807

#9/AA
11/15/02
JME/ew

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner : Jana A. Hines
Art Unit : 1645
Applicants : Helen Rachel Crooke, Enda Elizabeth Clarke, Paul Howard Everest, Gordon Dougan, David William Holden, Jacqueline Elizabeth Shea, Robert Graham Feldman
Serial No. : 09/830,807
Filed : April 30, 2001
Conf. No. : 2112
For : Virulence Genes and Proteins, and Their Use

Assistant Commissioner for Patents
Washington, D.C. 20231

ELECTION UNDER 35 U.S.C. § 121

Sir:

In response to the written restriction requirement dated October 9, 2002, the applicants hereby elect, with traverse, to prosecute the Group V claims, e.g., claims 9 and 18-19, drawn to a method for screening potential drugs or for the detection of virulence. The applicants further elect the following species: *tatB* (SEQ ID NO. 12).

A Supplemental Preliminary Amendment accompanies this Election.

The applicants respectfully submit that there is unity of invention among the claims in the subject application. As the Examiner is aware, under PCT Rule 13.1, there is unity of invention if a group of inventions in an application are so linked as to form a single general inventive concept. PCT Rule 13.2 states that unity of invention exists where there is a technical

relationship among the claimed inventions involving one or more of the same or corresponding "special technical features." The expression "special technical features" is defined in the rules as those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art.

The applicants respectfully submit that claims directed to a polynucleotide (Group I, claims 1 and 2) and the peptide encoded by the polynucleotide (Group II, claims 3 and 12) are clearly linked so as to form a general inventive concept. Annex B of the Administrative Instructions Under the PCT (see, for example, Part 2, Example 17 therein) specifically indicates that a claim to Protein X and a claim to a DNA sequence encoding Protein X, in fact, have unity of invention. Furthermore, PCT Rule 13.3 states that the determination of whether a group of inventions is linked by a single inventive concept should be made without regard to whether the inventions are claimed separately. The other claims of Group I merely recite hosts transformed with an operon comprising the gene. Thus, the applicants respectfully submit that there is unity of invention between the invention of Groups I and II.

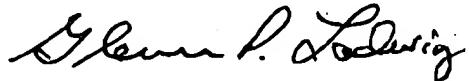
The applicants would also like to bring to the Examiner's attention that during the international phase, the PCT application corresponding to the subject U.S. national application was determined to have unity of invention with respect to several of the Groups set forth in the Restriction Requirement. For example, the International Preliminary Examining Authority (IPEA) indicated that the *tatA*, *tatB*, and *tatC* genes are linked by the same inventive concept. These genes, along with *tatD*, are located on the same operon, and all four genes operate through a single mechanism of export of folded proteins. Therefore, the applicants submit that claims directed to these genes do not lack unity of invention. Furthermore, the applicants respectfully request that the composition of matter claims directed to these genes and peptides encoded by them be considered and examined with the method claims in the subject application because the method claims reciting these genes also have this special technical feature. The applicants note that during the international phase, the International Searching Authority and IPEA did not find a lack of unity with respect to the different uses of the virulence genes.

Opportunities to claim 103-121 multiple inventors

The applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

Respectfully submitted,



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Attachment: Supplemental Preliminary Amendment